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22JE-CC00570 - SABRINA BYRD ET AL V U.S. SILICA COMPANY (E-CASE)

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08/15/2022	<input type="checkbox"/> Corporation Served Document ID - 22-SMCC-1144; Served To - U.S. SILICA COMPANY; Server - ; Served Date - 21-JUL-22; Served Time - 10:01:00; Service Type - Sheriff Department; Reason Description - Served; Service Text - BONNIE LOVE
08/12/2022	<input type="checkbox"/> Notice of Service Return of Service. Filed By: Amanda N Murphy On Behalf Of: SABRINA BYRD, ESTATE OF LEONARD WAYNE BYRD, ESTATE OF REBECCA JOYCE BYRD, DENNIS BYRD, MICHELLE BYRD, LISA FORRESTER, LEONARD BYRD, RONDA PEZZULICH
07/19/2022	<input type="checkbox"/> Certificate of Service Certificate of Mailing. Filed By: Amanda N Murphy On Behalf Of: SABRINA BYRD, ESTATE OF LEONARD WAYNE BYRD, ESTATE OF REBECCA JOYCE BYRD, DENNIS BYRD, MICHELLE BYRD, LISA FORRESTER, LEONARD BYRD, RONDA PEZZULICH
07/14/2022	<input type="checkbox"/> Summons Issued-Circuit Document ID: 22-SMCC-1144, for U.S. SILICA COMPANY.
07/13/2022	<input type="checkbox"/> Filing Info Sheet eFiling Filed By: Amanda N Murphy
	<input type="checkbox"/> Memorandum Filed Memorandum Requesting Summons. Filed By: Amanda N Murphy On Behalf Of: SABRINA BYRD, ESTATE OF LEONARD WAYNE BYRD, ESTATE OF REBECCA JOYCE BYRD, DENNIS BYRD, MICHELLE BYRD, LISA FORRESTER, LEONARD BYRD, RONDA PEZZULICH
	<input type="checkbox"/> Pet Filed in Circuit Ct Petition.
	<input type="checkbox"/> Judge Assigned

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Released 08/02/2022

EXHIBIT A

IN THE CIRCUIT COURT OF JEFFERSON COUNTY
STATE OF MISSOURI

SABRINA BYRD, individually, and on behalf)	
of the Estate of Leonard Wayne Byrd and the)	
Estate of Rebecca Joyce Byrd, DENNIS BYRD,)	
MICHELLE BYRD, LISA FORRESTER,)	
LEONARD LEE BYRD and)	
RONDA PEZZULICH,)	
)	Cause No.
Plaintiffs,)	
)	Division
v.)	
)	<u>JURY TRIAL DEMANDED</u>
U.S. SILICA COMPANY,)	
Serve: Registered Agent)	
CT Corporation System)	
120 South Central Avenue)	
Clayton, MO 63105)	
)	
Defendant.)	

PETITION FOR WRONGFUL DEATH

COMES NOW Plaintiffs Sabrina Byrd, individually, and on behalf of the Estate of Leonard Wayne Byrd and the Estate of Rebecca Joyce Byrd, Dennis Byrd, Michelle Byrd, Lisa Forrester, Leonard Lee Byrd and Ronda Pezzulich, through counsel, and for their cause of action against Defendant U.S. Silica Company, hereby states as follows:

ALLEGATIONS COMMON TO ALL COUNTS

1. On November 23, 2020, James Milstead was driving a tractor-trailer on Interstate 55 in Pevely, Missouri, when he failed to see a vehicle slowing in the road in front of him. Milstead struck the rear of the vehicle at highway speed, lost control of his rig, smashed through the cable barrier, and struck an oncoming vehicle head-on, killing the two people inside. Leonard Byrd, 72, and Rebecca Joyce Byrd, 66, left behind their adult children, the named Plaintiffs in this action. On the date of the crash and at all relevant times, Milstead was engaged in hauling sand for Defendant U.S. Silica Company.

Parties, Jurisdiction, and Venue

2. Decedents Leonard Byrd and Rebecca Joyce Byrd were residents and citizens of Ste. Genevieve, Missouri.
3. Plaintiffs Sabrina Byrd, Dennis Byrd, Michelle Byrd, and Lisa Forrester are and have been at all times pertinent hereto residents and citizens of the State of Missouri.
4. Plaintiff Leonard Lee Byrd is and has been at all times pertinent hereto a resident and citizen of the State of Texas.
5. Plaintiff Ronda Pezzulich is and has been at all times pertinent hereto a resident and citizen of the State of Florida.
6. Plaintiffs Sabrina Byrd, Michelle Byrd, Lisa Forrester and Leonard Lee Byrd are the natural and biological children of decedents Leonard Wayne Byrd and Rebecca Joyce Byrd (“decedents”).
7. Plaintiff Dennis Byrd is the adopted son of decedents Leonard Wayne Byrd and Rebecca Joyce Byrd.
8. Plaintiff Ronda Pezzulich is the natural and biological daughter of decedent Leonard Wayne Byrd.
9. Plaintiffs Sabrina Byrd, Dennis Byrd, Michelle Byrd, Lisa Forrester and Leonard Lee Byrd bring these claims for wrongful death pursuant to RSMo § 537.080, *et. seq.*, in connection with the death of their parents, decedents Leonard Wayne Byrd and Rebecca Joyce Byrd, arising out of the crash described herein.
10. Plaintiff Ronda Pezzulich brings her claim for wrongful death pursuant to RSMo § 537.080, *et. seq.*, in connection with the death of her parent, decedent Leonard Wayne Byrd, arising out of the crash described herein.

11. Collectively, Sabrina Byrd, Dennis Byrd, Michelle Byrd, Lisa Forrester, Leonard Lee Byrd and Ronda Pezzulich (“Plaintiffs”) are the only persons entitled to bring a cause of action for the wrongful deaths of decedents pursuant to RSMo § 537.080(1).
12. Pursuant to Letters of Administration issued by the Probate Division of the Circuit Court of Sainte Genevieve County, Missouri, Plaintiff Sabrina Byrd is serving as the duly appointed personal representative of the Estate of Leonard Wayne Byrd (Cause No. 21SG-PR00014) and the Estate of Rebecca Joyce Byrd (Cause No. 21SG-PR00015).
13. Defendant U.S. Silica Company (“US Silica”) is a Delaware corporation with its principal place of business at 24275 Katy Freeway, Katy, Texas 77494, is registered in the State of Missouri for purposes of conducting and transacting business in the State of Missouri, and systematically and routinely conducts business within the State of Missouri, with a registered agent for receipt of service of process at 120 South Central Avenue, Clayton, MO 63105.
14. Jurisdiction and venue are proper in the Circuit Court of Jefferson County, State of Missouri insofar as the fatal collision described herein occurred within Jefferson County, State of Missouri, and insofar as Defendant US Silica is subject to specific personal jurisdiction within the State of Missouri.

Background and Crash

15. Non-party Hall Hauling, LLC, is a Missouri limited liability company, created and recognized by the State of Missouri on June 22, 1995, with a registered office address located at 6120 Creech Lane, Troy, MO 63379, and listing its registered agent as Jason Hall.
16. At all relevant times, Hall Hauling, LLC, was an interstate motor carrier authorized to transport goods in interstate commerce and in the State of Missouri pursuant to a United States Department of Transportation permit (USDOT #660210).

17. For years, Defendant U.S. Silica Company, a shipper, has been one of Hall Hauling, LLC's customers in that Hall Hauling, LLC had routinely and customarily carried freight for U.S. Silica Company for profit.
18. In approximately 2018, Defendant U.S. Silica Company cancelled its contract with Hall Hauling, LLC, and/or otherwise endeavored to stop routinely and customarily tendering loads to motor carrier Hall Hauling, LLC for shipment.
19. At approximately the same time, Defendant U.S. Silica Company entered into a contract with or otherwise endeavored to start routinely and customarily tendering loads to a different entity, Hall Construction Services, LLC, for shipment.
20. Hall Construction Services, LLC, is a Missouri limited liability company, created and recognized by the State of Missouri on January 1, 2018, with a registered office address located at 6120 Creech Lane, Troy, MO 63379, and listing its registered agent as Jason Hall.
21. Hall Construction Services, LLC does not have motor carrier authority or broker authority and has never had such authority since its inception on January 1, 2018.
22. At all relevant times, Jason Hall has been the sole owner, member, and manager of Hall Hauling, LLC and Hall Construction Services, LLC.
23. At all relevant times, Hall Hauling, LLC and Hall Construction Services, LLC, shared an office and employees, including Jason Hall and Chelsi Shockley.
24. In the three years prior to Hall Construction Services, LLC's creation on January 1, 2018, Hall Hauling, LLC's motor carrier safety record plummeted, due to a pattern of unsafe acts and shown by numerous interventions by safety authorities, including but not limited to:
 - a. An on-site focused investigation by safety authorities to address issues on March 17, 2015;
 - b. A fine of \$42,640.00 by safety authorities on July 24, 2015, for repeated violations of rules regulating drive times to 14 hours or fewer;

- c. Crashes by drivers on August 21, 2015, August 16, 2016, and May 5, 2017, one of which resulted in a death;
 - d. A safety compliance review on June 22, 2016; and
 - e. A safety compliance review on October 19, 2017.
25. In the midst of the safety issues described above, in June of 2017, Hall Hauling, LLC hired James Milstead as a driver, despite its inability to verify any of Milstead's stated experience driving a commercial motor vehicle.
26. In 2018, in lieu of continuing to hire Hall Hauling, LLC, Defendant U.S. Silica Company contracted with Hall Construction Services, LLC, a newly created company that had no operating authority, owned no commercial motor vehicles, and had no experience record and therefore, no safety history either way, as one of its regular motor carriers.
27. Between mid-2018 and the crash on November 23, 2020, Hall Construction Services, LLC, brokered all of its U.S. Silica loads to Hall Hauling, LLC.
28. Between mid-2018 and the crash on November 23, 2020, Hall Hauling, LLC's equipment and drivers, including James Milstead, continued to show up at U.S. Silica Company each day to pick up and haul freight, even though U.S. Silica had hired a "new" motor carrier in Hall Construction Services, LLC.
29. Between mid-2018 and the crash on November 23, 2020, Hall Hauling, LLC's safety record continued to deteriorate, with the following safety information being publicly available to Defendant U.S. Silica at a minimum:

DATE	TYPE	CITATION/VIOLATION	LOCATION
10.04.2018	Crash	Improper lane usage	Bellefontaine
11.14.2018	Vehicle Maint.	Inoperative turn signal	MO
11.29.2018	Unsafe Driving	Failure to obey traffic device	MO
12.17.2018	Crash	Failure to yield	West Alton
01.22.2019	Unsafe Driving	Failure to obey traffic device	MO
01.29.2019	Vehicle Maint.	Mud flaps missing or defective	MO
02.08.2019	Vehicle Maint.	Hood not securely fastened	MO
02.22.2019	Crash	Following too close	Lake St. Louis
03.06.2019	Vehicle Maint.	Damaged or discolored windshield	MO

04.08.2019	Vehicle Maint. Vehicle Maint. Vehicle Maint. Vehicle Maint.	Clamp or roto type brake out-of-adjustment; Brake hose or tubing chafing and/or kinking; CMV manufactured after 10.19.1994 with automatic airbrake system that fails to compensate for wear; Inoperable head lamps	MO
04.11.2019	Vehicle Maint. Vehicle Maint.	No or improper load securement; Wheel fasteners loose and/or missing	MO
04.22.2019	HOS Violation Vehicle Maint.	Driver failed to manually add shipping document number; Operating CMV without proof of periodic inspection	IA
05.10.2019	Vehicle Maint. Vehicle Maint.	Inoperable head lamps; Damaged or discolored windshield	MO
08.22.2019	Vehicle Maint. Vehicle Maint. Vehicle Maint.	Brake tubing and hose adequacy; Brake tubing and hose adequacy under vehicle; Inoperable required lamp	MO
09.06.2019	Unsafe Driving Vehicle Maint.	Speeding 6-10 mph over speed limit; Mud flaps missing or defective	MO
09.10.2019	Vehicle Maint. Vehicle Maint.	Mud flaps missing or defective; Lead spring assembly defective/missing	MO
09.12.2019	Unsafe Driving Vehicle Maint.	Speeding 6-10 mph over speed limit; Brake hose or tubing chafing and/or kinking	MO
09.30.2019	Unsafe Driving	Speeding 6-10 mph over speed limit	MO
10.03.2019	Unsafe Driving HOS Violation	Speeding 6-10 mph over speed limit; Portable ELD not mounted in fixed position/visible to driver	IA
10.04.2019	Crash	None	Valley Park
10.05.2019	Vehicle Maint. Vehicle Maint. Vehicle Maint. HOS Violation	Lower rear mud flaps retroreflective materials; Upper rear retroreflective materials; No or defective ABS malfunction indicator lamp; Portable ELD not mounted in fixed position/visible to driver	IA
10.21.2019	Vehicle Maint. Vehicle Maint.	CMV not equipped with ABS malfunction circuit; Tire tread depth less than 2/32 of inch	MO
10.24.2019	Vehicle Maint.	Tire tread depth less than 2/32 of inch	IL
10.28.2019	Unsafe Driving	Failing to use seat belt while operating CMV	MO
02.03.2020	Vehicle Maint.	Operating CMV without proof of periodic inspection	MO
02.03.2020	Driver Fitness	Driver not physically qualified	MO
02.10.2020	Unsafe Driving Vehicle Maint.	Failing to use seat belt while operating CMV; CMV other than tractor trailer manufactured on or after 03.01.1998 not equipped with antilock brake system	MO
02.17.2020	Vehicle Maint.	Operate CMV without proof of periodic inspection	MO
03.09.2020	Crash	None	St. Charles
03.31.2020	Vehicle Maint. Vehicle Maint. Vehicle Maint. Vehicle Maint.	Brake hose or tubing chafing/kinking; Clamp or roto type brake out-of-adjustment; CMV manufactured after 10.19.1994 with automatic airbrake system that fails to compensate for wear; No or defective ABS malfunction indicator lamp	MO
04.20.2020	Vehicle Maint. Vehicle Maint.	Mud flaps missing or defective; Tire-cut exposing ply and/or belt materials	MO
04.29.2020	Vehicle Maint.	Inoperable required lamp	MO

05.04.2020	Unsafe Driving	Lane restriction violation	MO
05.22.2020	Unsafe Driving	Failing to use seat belt while operating CMV	MO
05.27.2020	Unsafe Driving	Failing to use seat belt while operating CMV	MO
06.10.2020	Crash	Overcorrected	Ralls County
06.13.2020	Unsafe Driving	Speeding 6-10 mph over speed limit	MO
07.01.2020	Unsafe Driving Vehicle Maint.	Speeding 11-14 mph over speed limit; Mud flaps missing or defective	MO
07.02.2020	Unsafe Driving	Failing to use seat belt while operating CMV	IA
07.07.2020	Crash	None	Ralls County
07.30.2020	Unsafe Driving	Lane restriction violation	MO
08.27.2020	Vehicle Maint.	Brake connections with leaks or constructions	IA
09.12.2020	Crash	None	St. Louis City
09.18.2020	Unsafe Driving	Driving a CMV while disqualified	MO
09.22.2020	Unsafe Driving	Speeding 6-10 mph over speed limit	MO
10.09.2020	Unsafe Driving	Speeding 6-10 mph over speed limit	MO

30. Prior to the date of the crash, James Milstead had a long history of moving violations, motor vehicle related citations, and criminal violations demonstrating a longstanding, consistent and unrelenting pattern of his propensity to operate his tractor-trailer in an unsafe fashion, as shown by (but not limited to) the following list, which at all times pertinent hereto was readily available on the internet:

DATE	CHARGE	COUNTY	CASE/TICKET NO.	PROOF
08.08.2005	Speeding - 11-15 over	Lincoln	050363204	Case.Net
04.24.2006	Speeding - 11-15 over	Pike	041281558	Case.Net
12.13.2007	Drove with defective equip -2D off	StL City Municipal	051151314-6	REJIS
04.24.2008	Overweight	St. Clair	08TR0023782	TLO
01.05.2009	No comm. license – Exceeded 5,000 lbs.	StL City Municipal	071974776-B	REJIS
04.20.2009	Failed to drive on right half roadway	Ste. Genevieve	071083022	Case.Net
11.20.2012	Operate MC on tired fabric exposed/inferior load rate/groove depth/flat	Pike	700581972	Case.Net
01.15.2014	Impede traffic	StL City Municipal	130547561-7	REJIS
07.15.2016	Failed to have mudflaps	StL County	702102413	Case.Net
07.15.2016	Driver operate CMV without seatbelt	StL County	702102414	Case.Net
09.01.2016	Gross weight exceeded 80,000 lbs.	Lincoln	702126720	Case.Net
04.12.2017	Failed to equip CMV with required brakes	Lafayette	702377508	Case.Net
05.25.2017	Operate MCV with unsafe/ improper frame/suspension/axle/ wheel/rim and or steering system	Pemiscot	702351568	Case.Net
05.25.2017	Failed to equip CMV with required brakes	Pemiscot	702351569	Case.Net

04.25.2018	Passed vehicle on right and travel off main portion of road	Jefferson	702733192	Case.Net
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31. For months prior to November 23, 2020, James Milstead began hauling sand for U.S. Silica Company on an exclusive or at least primary basis as compared to any other job duties.
32. On November 23, 2020, James Milstead was driving his usual and customary route to and from shipper U.S. Silica Company, hauling sand on behalf of U.S. Silica Company, in a tractor-trailer owned by Hall Hauling, LLC.
33. At the above-mentioned time and place, James Milstead was driving one of Hall Hauling, LLC's tractor trailers in a northerly direction on Interstate 55, near mile marker 182, in Jefferson County, Missouri, when he approached the rear of a slower-moving Chevrolet Cruze.
34. At the above-mentioned time and place, Milstead struck the rear of the Cruze, lost control, struck another northbound vehicle, smashed through the median barrier cables, entered the southbound lanes of Interstate 55, and struck the vehicle occupied by Rebecca Joyce Byrd and Leonard Wayne Byrd head-on, causing both their deaths.
35. The Cruze was in plain sight in the road in front of Milstead for over 11 seconds prior to impact, but Milstead took no action to avoid it.
36. At the above-mentioned time and place, James Milstead was careless and negligent in one or more of the following respects:
 - a. Milstead failed to keep a careful lookout;
 - b. Milstead drove while distracted;
 - c. Milstead drove on the wrong side of the road;
 - d. Milstead drove while tired and/or fatigued;
 - e. Milstead failed to stop, slow, slacken his speed, and/or take other evasive action when he knew or should have known he would crash;
 - f. Milstead drove at an excessive rate of speed;
 - g. Milstead drove while untrained and unqualified; and

- h. Milstead drove too fast for conditions.
- 37. James Milstead's negligence described above caused or contributed to cause Decedent Leonard Wayne Byrd and Decedent Rebecca Joyce Byrd severe injuries, conscious pain and suffering, and death.

COUNT I – NEGLIGENT HIRING/SELECTION OF AN INDEPENDENT CONTRACTOR

COME NOW Plaintiffs, through counsel, and for Count I of their cause of action against Defendant U.S. Silica Company, hereby state as follows:

- 38. Plaintiffs reallege and incorporate by reference each and every allegation set forth in the preceding paragraphs as if fully restated herein.
- 39. At all relevant times prior to and including the November 23, 2020, Defendant U.S. Silica Company, a shipper, hired, contracted, and/or selected Hall Construction Services, LLC, Hall Hauling, LLC and/or James Milstead as a motor carrier for the conveyance of loads on behalf of Defendant U.S. Silica Company.
- 40. At all relevant times, Defendant U.S. Silica Company, a large and sophisticated corporate entity and shipper, knew or should have known the following:
 - a. That Hall Construction Services, LLC was an incompetent, inexperienced, unlicensed, and unqualified motor carrier;
 - b. That Hall Hauling, LLC was an incompetent and unqualified motor carrier; and that Hall Hauling, LLC had a propensity for engaging in unsafe, risky and dangerous transportation practices, as illustrated by, but not limited to, the company violations prior to the fatal crash as detailed above.
 - c. That James Milstead was incompetent and unqualified to safely operate a commercial motor vehicle; and that Milstead had a propensity for unsafe driving by reason of his prior history of moving violations, motor vehicle related citations, criminal violations and his propensity to operate his tractor-trailer in an unsafe fashion.

41. On the date of the fatal crash, Defendant US Silica was under a legal duty which is non-delegable and cannot be contractually discharged, to exercise ordinary care in locating, qualifying, selecting, and hiring competent, careful and skillful freight brokers, motor carriers and/or joint venturers to ensure transportation was performed in a reasonably skillful, careful and safe fashion.
42. Defendant US Silica breached this duty and was thereby negligent in one or more of the following ways:
 - a. Defendant US Silica negligently placed the motoring public, including decedents, at a greater risk by hiring Hall Construction, Hall Hauling, Jason Hall, and/or James Milstead, individually and/or by and through Hall Hauling or Hall Construction, to broker and/or transport freight versus locating a motor carrier and/or tractor-trailer driver with a better safety record, insofar as Defendant U.S. Silica knew or should have known that Hall Construction Services, LLC and/or Jason Hall would fail to conduct a meaningful and competitive search for any trucking company and/or truck driver other than Hall Hauling and James Milstead because Jason Hall profited both by brokering the load through Hall Construction and by transporting the load through Hall Hauling; and Defendant US Silica further knew or should have known that, had a meaningful and competitive search been conducted, the subject load could have been brokered with a company and driver with a better safety record;
 - b. Defendant US Silica negligently hired Hall Construction, Hall Hauling, Jason Hall and/or James Milstead, individually and/or by and through Hall Hauling or Hall Construction, to transport the subject load on the date of the fatal crash;
 - c. Defendant US Silica negligently retained Hall Construction, Hall Hauling, Jason Hall and/or James Milstead, individually and/or by and through Hall Hauling or Hall Construction, to transport the subject load on the date of the fatal crash;

- d. Defendant US Silica negligently supervised Hall Construction, Hall Hauling, Jason Hall and/or James Milstead, individually and/or by and through Hall Hauling or Hall Construction, to transport the subject load on the date of the fatal crash;
 - e. Defendant US Silica negligently failed to promulgate, maintain, follow and/or enforce policies, procedures and rules to ensure that the process by which it located, screened, selected and hired its freight brokers, motor carriers and/or tractor-trailer drivers in a manner that prioritized safety over profits.
43. Defendant U.S. Silica Company's negligence as described herein concurred with James Milstead's negligence in operating the tractor trailer on November 23, 2020.
44. Defendant U.S. Silica Company's negligence as described herein directly and proximately caused the deaths of Leonard Wayne Byrd and Rebecca Joyce Byrd.
45. Defendant U.S. Silica Company's negligence and/or recklessness described above caused or contributed to cause Decedent Leonard Wayne Byrd and Decedent Rebecca Joyce Byrd severe injuries, conscious pain and suffering, and death.
46. As a direct and proximate result of the negligence and/or recklessness of Defendant U.S. Silica Company resulting in Decedent Leonard Wayne Byrd and Decedent Rebecca Joyce Byrd's deaths, Plaintiffs have been damaged in that they lost the financial support of Decedents, incurred funeral and other expenses, and have been permanently deprived of their services, companionship, comfort, society, counsel and support, all to their great damage.

WHEREFORE, Plaintiffs respectfully pray for judgment against Defendant U.S. Silica Company in an amount that is fair and reasonable in excess of Twenty-Five Thousand Dollars **(\$25,000.00)**, plus costs and interest incurred herein and for such other orders as this Court deems just under the circumstances.

COUNT II – VICARIOUS LIABILITY – PRINCIPAL/AGENT

COME NOW Plaintiffs, through counsel, and for Count II of their cause of action against Defendant U.S. Silica Company, hereby state as follows:

47. Plaintiffs reallege and incorporate by reference each allegation set forth in the preceding paragraphs as if fully restated herein.
48. At all relevant times, James Milstead, Jason Hall, Hall Construction Services, LLC, and/or Hall Hauling, LLC, were acting in the course and scope of their agency and/or employment with Defendant U.S. Silica Company and their actions as described herein were done to serve the business interests of Defendant U.S. Silica Company.
49. In the alternative, at all relevant times, James Milstead, Jason Hall, Hall Construction Services, LLC, and/or Hall Hauling, LLC's actions, as described herein, were performed partially to serve the interests of James Milstead, Hall Construction Services, LLC, and/or Hall Hauling, LLC, and partially to serve the interests of Defendant U.S. Silica Company.
50. Defendant U.S. Silica Company's business created the necessity for Milstead's trip on November 23, 2020.
51. At all relevant times, Defendant U.S. Silica either controlled or had the right to control the physical conduct of James Milstead, Jason Hall, Hall Construction Services, LLC, and/or Hall Hauling, LLC.
52. Defendant U.S. Silica Company's negligence, by and through its agent, servant, and/or employees James Milstead, Hall Construction Services, LLC, and/or Hall Hauling, as set out above caused or contributed to cause Decedent Leonard Wayne Byrd and Decedent Rebecca Joyce Byrd severe injuries, conscious pain and suffering, and death.
53. As a direct and proximate result of the negligence and/or recklessness of Defendant U.S. Silica Company resulting in Decedent Leonard Wayne Byrd and Decedent Rebecca Joyce Byrd's deaths, Plaintiffs have been damaged in that they lost the financial support of Decedents,

incurred funeral and other expenses, and have been permanently deprived of their services, companionship, comfort, society, counsel and support, all to their great damage.

WHEREFORE, Plaintiffs respectfully pray for judgment against Defendant U.S. Silica Company in an amount that is fair and reasonable in excess of Twenty-Five Thousand Dollars **(\$25,000.00)**, plus costs and interest incurred herein and for such other orders as this Court deems just under the circumstances.

COUNT III – VICARIOUS LIABILITY – JOINT VENTURE/MUTUAL AGENCY

COME NOW Plaintiffs, through counsel, and for Count III of their cause of action against Defendant U.S. Silica Company, hereby state as follows:

54. Plaintiffs reallege and incorporate by reference the allegations set forth in the preceding paragraphs as if fully restated herein.
55. At all relevant times, including the time of the collision, Hall Hauling, Hall Construction, Jason Hall, James Milstead, and/or Defendant U.S. Silica Company undertook to enter into a consensual arrangement between themselves (hereinafter, collectively, the “Joint Venturers”), to ship, broker, and/or carry Defendant U.S. Silica Company’s freight for profit together as a joint enterprise and/or joint venture.
56. The structure of the joint venture consists of mutual agency relationships in which entities, by express or implied agreement, undertake to work together for the common purpose of shipping, brokering, and carrying freight for the common purpose of profiting from the regular transportation of freight during regular trips.
57. The express or implied agreement at the heart of the venture is as follows:
 - a. Hall Hauling, LLC supplies the personnel, equipment, and motor carrier status required for hauling freight;

- b. Hall Construction Services, LLC acts as “broker” between the motor carrier and shipper in order to obtain additional profit and/or to supply the clean safety record necessary to meet shipper U.S. Silica Company’s requirements;
 - c. James Milstead, individually, and/or as an agent, servant, and/or employee of Hall Hauling, LLC and/or Hall Construction Services, LLC, and/or the joint venture as a whole, operated the commercial motor vehicle and hauled the loads;
 - d. U.S. Silica Company, the shipper, supplies the freight and pays for the shipping cost, but at a discount due to the riskiness of associating with an unqualified broker and a motor carrier with a record that is demonstrably unsafe; and
 - e. All parties profit more than they would if not for each of the parties’ participation.
58. The Joint Venturers acted in concert to combine their resources, contacts, labor, efforts, personnel, tractor-trailers and equipment, including the Tractor-Trailer involved in this fatal crash, and agreed to take a common interest in the delivery of services in the commercial trucking industry by providing broker logistics and freight transportation, with each giving substantial assistance to the other in accomplishing this objective.
59. At all relevant times, including the time of the collision, the acts of James Milstead, including his operation of the Tractor-Trailer, were performed in the course and scope of his agency to serve the mutual benefit and interests of the Joint Venturers.
60. At all relevant times, including the time of the crash, Defendant U.S. Silica Company, by and through its agents, servants, employees, and/or joint venturers, hired and/or selected the motor carrier and driver, operated the tractor-trailer, and were negligent as set out above.
61. Defendant U.S. Silica Company’s negligence, by and through its agent, servant, employee, and/or joint venturer James Milstead, Hall Construction Services, LLC, and/or Hall Hauling, as set out above caused or contributed to cause Decedent Leonard Wayne Byrd and Decedent Rebecca Joyce Byrd severe injuries, conscious pain and suffering, and death.

62. As a direct and proximate result of the negligence and/or recklessness of Defendant U.S. Silica Company resulting in Decedent Leonard Wayne Byrd and Decedent Rebecca Joyce Byrd's deaths, Plaintiffs have been damaged in that they lost the financial support of Decedents, incurred funeral and other expenses, and have been permanently deprived of their services, companionship, comfort, society, counsel and support, all to their great damage.
63. At all relevant times, including the time of the collision, the Joint Venturers each acted as agents of one another with each having control or the right to control the joint enterprise and/or joint venture, including the right to control the conduct of James Milstead.
64. Accordingly, Hall Hauling, Hall Construction, Jason Hall and Defendant US Silica are liable, jointly and severally, in partnership and/or by virtue of joint enterprise and/or joint venture for negligent acts and/or omissions causing or contributing to cause the fatal crash described herein and for the resulting deaths of Leonard Wayne Byrd and Rebecca Joyce Byrd.
65. Defendant US Silica acted in a manner that, either alone or combined with the actions of the other Joint Venturers, concurred with the negligent actions and/or omissions of each other, to directly and proximately cause and/or contribute to causing the deaths of Leonard Wayne Byrd and Rebecca Joyce Byrd.

WHEREFORE, Plaintiffs respectfully pray for judgment against Defendant U.S. Silica Company in an amount that is fair and reasonable in excess of Twenty-Five Thousand Dollars **(\$25,000.00)**, plus costs and interest incurred herein and for such other orders as this Court deems just under the circumstances.

**COUNT IV – PLAINTIFFS AS THIRD-PARTY BENEFICIARY
OF JOINT VENTURERS' CONTRACT**

COME NOW Plaintiffs, through counsel, and for Count IV of their cause of action against Defendant U.S. Silica Company, hereby state as follows:

66. Plaintiffs reallege and incorporate by reference the allegations set forth in the preceding paragraphs as if fully restated herein.

67. At all relevant times referenced herein, including at the time of the collision, there was an agreement between Hall Hauling, Hall Construction, Jason Hall and Defendant US Silica pursuant to which Defendant US Silica agreed to the payment of certain monies to the others in exchange for their brokering and/or conveying of freight from the premises of Defendant US Silica.
68. Defendant US Silica owed a duty to exercise due care in the performance of the contractual undertakings, including a duty to select a broker and motor carrier capable of reasonably complying with US Silica's rules and specific safety standards incorporated into said contract for the protection of the motoring public who must share the road with the freight in transport.
69. Defendant US Silica breached this contractually-assumed duty in that it failed to exercise due care in selecting or approving Hall Hauling, Hall Construction and/or Jason Hall as the broker and/or motor carrier to transport freight from the premises of Defendant US Silica on the day of the fatal accident at issue.
70. The terms of the contract directly and clearly express an intent to benefit an identifiable class of persons, namely the motoring public, including decedents, in that the contract incorporates specific safety standards for the protection of the motoring public who must share the road with the freight in transport. Thus, the decedents were third party beneficiaries to this contract.
71. Defendant US Silica's negligent performance of its contractual duty, in selecting, or in failing to reject the selection of, Hall Hauling, Hall Construction and/or Jason Hall as the broker and/or motor carrier, directly and proximately caused the deaths of Leonard Wayne Byrd and Rebecca Joyce Byrd.

WHEREFORE, Plaintiffs respectfully pray for judgment against Defendant U.S. Silica Company in an amount that is fair and reasonable in excess of Twenty-Five Thousand Dollars

(\$25,000.00), plus costs and interest incurred herein and for such other orders as this Court deems just under the circumstances.

GOLDBLATT + SINGER

/s/ Amanda N. Murphy

AMANDA N. MURPHY #59750

amurphy@stlinjurylaw.com

SHAUN M. FALVEY #55294

sfalvey@stlinjurylaw.com

8182 Maryland Ave., Ste. 801

St. Louis, MO 63105

(314) 231-4100 – Office

(314) 241-5078 – Fax

ATTORNEYS FOR PLAINTIFFS

IN THE CIRCUIT COURT OF JEFFERSON COUNTY
STATE OF MISSOURI

SABRINA BYRD, individually, and on behalf)	
of the Estate of Leonard Wayne Byrd and the)	
Estate of Rebecca Joyce Byrd, DENNIS BYRD,)	
MICHELLE BYRD, LISA FORRESTER,)	
LEONARD LEE BYRD and)	
RONDA PEZZULICH,)	
)	Cause No.
Plaintiffs,)	
)	Division
v.)	
)	<u>IURY TRIAL DEMANDED</u>
U.S. SILICA COMPANY,)	
Serve: Registered Agent)	
CT Corporation System)	
120 South Central Avenue)	
Clayton, MO 63105)	
)	
Defendant.)	

MEMORANDUM REQUESTING SUMMONS

COME NOW Plaintiffs, by and through undersigned attorney, and hereby requests a **Summons** be ordered to issue for service on **Defendant U.S. Silica Company, c/o CT Corporation System, 120 South Central Avenue, Clayton, MO 63105** for service by John Houseman or any agent of Captured Investigative Agency, P.O. Box 50341, Clayton, MO 63105.

So Ordered: _____

GOLDBLATT + SINGER

/s/ Amanda N. Murphy
 AMANDA N. MURPHY #59750
amurphy@stlinjurylaw.com
 SHAUN M. FALVEY #55294
sfalvey@stlinjurylaw.com
 8182 Maryland Ave., Ste. 801
 St. Louis, MO 63105
 (314) 231-4100 - Office
 (314) 241-5078 - Fax


ATTORNEYS FOR PLAINTIFFS



IN THE 23RD JUDICIAL CIRCUIT, JEFFERSON COUNTY, MISSOURI

Judge or Division: BRENDA STACEY	Case Number: 22JE-CC00570	(Date File Stamp)
Plaintiff/Petitioner: SABRINA BYRD	Plaintiff's/Petitioner's Attorney/Address Amanda N Murphy 8182 Maryland Ave STE 801 ST LOUIS, MO 63105	
Defendant/Respondent: U.S. SILICA COMPANY	Court Address: P O BOX 100 300 MAIN ST HILLSBORO, MO 63050	
Nature of Suit: CC Wrongful Death		

Summons in Civil Case

The State of Missouri to: U.S. SILICA COMPANY	
Alias:	
REGISTERED AGENT CT CORPORATION SYSTEM 120 SOUTH CENTRAL AVENUE CLAYTON, MO 63105	
 COURT SEAL OF JEFFERSON COUNTY	You are summoned to appear before this court and to file your pleading to the petition, a copy of which is attached, and to serve a copy of your pleading upon the attorney for plaintiff/petitioner at the above address all within 30 days after receiving this summons, exclusive of the day of service. If you fail to file your pleading, judgment by default may be taken against you for the relief demanded in the petition.
July 14, 2022 Date	MICHAEL REUTER, CIRCUIT CLERK BY: S/T. LUCAS, DEPUTY CLERK Clerk
Further Information:	

Sheriff's or Server's Return

Note to serving officer: Summons should be returned to the court within 30 days after the date of issue.

I certify that I have served the above Summons by: (check one)

- ☐ delivering a copy of the summons and petition to the defendant/respondent.
☐ leaving a copy of the summons and petition at the dwelling house or usual place of abode of the defendant/respondent with _____, a person at least 18 years of age residing therein.
☐ (for service on a corporation) delivering a copy of the summons and petition to: _____ (name) _____ (title).
☐ other: _____

Served at _____ (address)
 in _____ (County/City of St. Louis), MO, on _____ (date) at _____ (time).

 Printed Name of Sheriff or Server

 Signature of Sheriff or Server

Must be sworn before a notary public if not served by an authorized officer:

Subscribed and sworn to before me on _____ (date).

(Seal)

My commission expires: _____

 Date

 Notary Public

Sheriff's Fees, if applicable

Summons	\$ _____
Non Est	\$ _____
Sheriff's Deputy Salary	
Supplemental Surcharge	\$ 10.00
Mileage	\$ _____ (_____ miles @ \$. _____ per mile)
Total	\$ _____

A copy of the summons and petition must be served on **each** defendant/respondent. For methods of service on all classes of suits, see Supreme Court Rule 54.

IN THE CIRCUIT COURT OF JEFFERSON COUNTY
STATE OF MISSOURI

SABRINA BYRD, individually, and on behalf)	
of the Estate of Leonard Wayne Byrd and the)	
Estate of Rebecca Joyce Byrd, DENNIS BYRD,)	
MICHELLE BYRD, LISA FORRESTER,)	
LEONARD LEE BYRD and)	
RONDA PEZZULICH,)	
)	Cause No. 22JE-CC00570
Plaintiffs,)	
)	Division 4
v.)	
)	<u>IURY TRIAL DEMANDED</u>
U.S. SILICA COMPANY,)	
)	
Defendant.)	

CERTIFICATE OF SERVICE

The undersigned hereby certifies that Plaintiff's First Request for Production Directed to Defendant was served with the Summons and Petition via special process server.

GOLDBLATT + SINGER

/s/ Amanda N. Murphy
AMANDA N. MURPHY #59750
amurphy@stlinjurylaw.com
SHAUN M. FALVEY #55294
sfalvey@stlinjurylaw.com
8182 Maryland Ave., Ste. 801
St. Louis, MO 63105
(314) 231-4100 - Office
(314) 241-5078 - Fax

ATTORNEYS FOR PLAINTIFFS



IN THE 23RD JUDICIAL CIRCUIT, JEFFERSON COUNTY, MISSOURI

Judge or Division: BRENDA STACEY	Case Number: 22JE-CC00570
Plaintiff/Petitioner: SABRINA BYRD	Plaintiff's/Petitioner's Attorney/Address Amanda N Murphy 8182 Maryland Ave STE 801 ST LOUIS, MO 63105
vs.	
Defendant/Respondent: U.S. SILICA COMPANY	Court Address: P O BOX 100 300 MAIN ST HILLSBORO, MO 63050
Nature of Suit: CC Wrongful Death	(Date File Stamp)

Summons in Civil Case

The State of Missouri to: U.S. SILICA COMPANY

Alias:

REGISTERED AGENT
CT CORPORATION SYSTEM
120 SOUTH CENTRAL AVENUE
CLAYTON, MO 63105

COURT SEAL OF



JEFFERSON COUNTY

You are summoned to appear before this court and to file your pleading to the petition, a copy of which is attached, and to serve a copy of your pleading upon the attorney for plaintiff/petitioner at the above address all within 30 days after receiving this summons, exclusive of the day of service. If you fail to file your pleading, judgment by default may be taken against you for the relief demanded in the petition.

July 14, 2022

Date

Further Information:

MICHAEL REUTER, CIRCUIT CLERK

BY: S/T. LUCAS, DEPUTY CLERK

Clerk

Sheriff's or Server's Return

Note to serving officer: Summons should be returned to the court within 30 days after the date of issue.

I certify that I have served the above Summons by: (check one)

☐ delivering a copy of the summons and petition to the defendant/respondent.☐ leaving a copy of the summons and petition at the dwelling house or usual place of abode of the defendant/respondent with _____, a person at least 18 years of age residing therein.☒ (for service on a corporation) delivering a copy of the summons and petition to: Bonnie Love (name) Process Specialist (title).☐ other: _____Served at 120 S Central ste 400 Clayton, MO 63105 (address)in St. Louis (County/City of St. Louis), MO, on 7/21/2022 (date) at 10:01 A.M. (time).John B. Houseman

Printed Name of Sheriff or Server

Signature of Sheriff or Server

Must be sworn before a notary public if not served by an authorized officer:

Subscribed and sworn to before me on _____ (date).

(Seal)

My commission expires: _____

Date

Notary Public

Sheriff's Fees, if applicable

Summons \$ _____

Non Est \$ _____

Sheriff's Deputy Salary \$ _____

Supplemental Surcharge \$ 10.00

Mileage \$ _____ (_____ miles @ \$ _____ per mile)

Total \$ _____

A copy of the summons and petition must be served on each defendant/respondent. For methods of service on all classes of suits, see Supreme Court Rule 54.